

**Routine Program Change  
To  
Commonwealth of Virginia Coastal Management Program**

**Request for Concurrence  
January 2010**

Coastal Primary Sand Dunes and Beaches  
Code of Virginia Title 28.2, Chapter 14

Submitted by: The Commonwealth of Virginia  
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## INTRODUCTION

The following constitutes a request by the Commonwealth of Virginia for the National Oceanic and Atmospheric Administration (NOAA) Office of Ocean and Coastal Resource Management (OCRM) to concur in a Routine Program Change to the Commonwealth of Virginia's Coastal Management Program (CMP).

The Commonwealth of Virginia has revised the Commonwealth's enforceable policies in Code of Virginia title 28.2, Chapter 14, known as the Coastal Primary Sand Dunes and Beaches Program.

In accordance with the requirements for Routine Program Changes as set forth in Coastal Zone Management Act (CZMA) §306(e), 15 C.F.R. §923.84, and OCRM's 1996 Program Change Guidance, the Commonwealth of Virginia has prepared the following analysis explaining why the proffered changes to the CMP are Routine Program Changes and not Amendments as described in 15 C.F.R. §923.80(d); and identifying the enforceable policies, describing the nature of each change, and examining the impact the changes have on the existing management program.

## ANALYSIS

The statutory sections governing the *Coastal Primary Sand Dunes and Beaches Program* were previously approved as part of the CMP in 1986, and updated through a Routine Program Change (RPI Number One) in 1988. Several sections dealing with enforcement were further updated through a Routine Program Change (RPI 93-1) in 1993.

This submission updates the program to reflect minor statutory changes in 1992, 1994, 1995, 1998, and 2008.

### *(A) Routine Program Change*

This analysis notifies OCRM of the Routine Program Change and explains why the program change will not result in an Amendment. Under 15 C.F.R. §923.80(d), amendments are defined as substantial changes in one or more of the five listed coastal management program areas:

- (1) uses subject to management;
- (2) special management areas;
- (3) boundaries;
- (4) authorities and organization
- (5) coordination, public involvement and national interest.

OCRM's Program Change guidance states that a substantial change is a high threshold based on a case-by-case determination. Such determination is made by reviewing indicators of substantial change, such as whether new or revised enforceable policies

address coastal uses or resources not previously managed, or make major changes in the way a state CMP manages coastal uses or resources. OCRM's Program Change guidance also states that an explanation why a proposed change will not result in an Amendment should describe the elements of the State CMP that are affected.

The statutory provisions being submitted are primarily recodifications giving new section numbers to the statutory provisions *already approved* by NOAA as part of the original program.

The statute was originally found at former Va. Code 62.1-13.21 through 62.1-13.28. In 1992, the Virginia General Assembly recodified the Coastal Primary Sand Dunes and Beaches statute to Va. Code 28.2-1400 et seq., reorganizing the prior sections for easier use, greater precision and clarity.

Additionally, in 1992 provisions were added to this chapter to make it more uniform with those parallel provisions in the Wetlands Program that describe the functions and processes of the Virginia Marine Resources Commission ("Commission") and the local government wetlands boards that have jurisdiction over both wetlands and coastal dunes ("wetlands boards").<sup>1</sup> This too was a minor change. Former Va. Code 62.1-13.27, an approved part of the CMP for the Coastal Primary Sand Dunes and Beaches Program, specified that "in administering the provisions of this chapter...the Commission, Commissioner or wetlands board as appropriate shall, as to the Coastal Primary Sand Dune Protection Act or an ordinance adopted pursuant thereto, bear all those duties and responsibilities and follow those procedures specified in §§62.1-13.7 through 62.1-13.19 of the code of Virginia in the same manner and on the same basis as they administer and enforce the Wetlands Act or an ordinance adopted pursuant thereto." In the 1992 recodification, the legislature set out each of the administrative sections separately in the new 28.2, Ch. 14. Thus, there is no change in administration, but there are new, separate section numbers.

Other minor updates to the program included authorizing representatives of the Commissioner and board chairman to sign documents, empowering the Town of Cape Charles to enact a wetlands zoning ordinance, authorizing wetlands boards to appoint alternate members, authorizing the Commission to develop administrative procedures to expedite permits and minor stylistic changes in language. In 1994, the word "town" was added to those provisions that describe the governing bodies that are authorized to act under the statute. This change maintains consistency in Title 28.2, which from its inception and as former Title 62 has recognized towns among the governing bodies authorized to participate in the management of wetland programs. In 2008, the legislation was amended to specifically authorize all tidewater jurisdictions (counties and cities) already authorized to enact wetlands ordinances to also adopt the coastal primary sand dune ordinance, and to add three plant species to the list of species indicating coastal primary dunes. These jurisdictions already had authority to adopt wetlands boards; the statutory amendment confirmed the authority of these jurisdictions to protect beaches and

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<sup>1</sup> The Wetlands Program, formerly at Va. Code 62.1-13.1 through 62.1-13.20, was recodified to Va. Code 28.2-1300 et seq.

dunes as well as wetlands along the Chesapeake Bay and its tributaries, by adopting the same model ordinance already applicable elsewhere in the Commonwealth's coastal jurisdictions.

In 1998, clarifying language was added to 28.2-1400 to ensure that mounds of sand, sandy soil or dredge spoil deposited for beach nourishment or replenishment did not themselves either expand or contract the area of the Commission's jurisdiction.

The changes do not substantially affect the uses subject to management under the CMP, special management areas, the boundaries of the coastal zone, authorities and organization, or coordination, public involvement and national interest.

*(B) Effect of Changes on Program*

*Effects on enforceable policies:* The enforceable policies for Coastal Primary Sand Dunes and Beaches remain the same as in the approved CMP. The Routine Program Change submitted herein is intended to update the statutory provisions and references implementing these continuing policies.

1992 Changes: The Coastal Primary Sand Dunes and Beaches Program statutes were, at the time of approval of Virginia's CMP located in Va. Code § 62.1-13.21 *et seq.* The legislature recodified these to Va. Code §28.2-1400 *et seq.* New cross-references were supplied in the newly created sections, and minor changes were made to the description of administrative processes.

1994 Changes: The legislature inserted "towns" as authorized acting governing bodies for dunes, which made the statute consistent with the language of the antecedent title and with the wetlands statute. The legislature authorized the Town of Cape Charles (already within Northampton County which had full authority to adopt a coastal dunes zoning ordinance) to adopt its own ordinance. This did not expand the geographic coverage or substantive standards already in place under the approved CMP. The legislature also provided for authorized representatives of the Commissioner to sign documents.

1995 Change: The legislature added a cross-reference to 28.2-1503, which expresses the Commission's stewardship responsibilities for the common lands and waters of the Commonwealth.

1998 Change: The legislature provided that mounds of sand, sandy soil or dredge spoil deposited for beach nourishment or replenishment do not themselves either expand or contract the area of the Commission's jurisdiction.

2008 Change: Based on findings of the Virginia Institute of Marine Science, the legislature added three indicator species to those helping to define coastal primary sand dunes, in the definitions section. The legislature also included "all of Tidewater Virginia" among the jurisdictions authorized to adopt the coastal dunes ordinance, 28.2-1403, thus giving the local wetlands boards the same powers throughout the coastal area.

The statutory sections affected by changes are identified in the attached table, which provides a description and analysis of each statutory change submitted, and identifies the Act of the General Assembly and year in which each change was made. The attached Code of Virginia sections highlight the statutory changes where new material, as opposed to mere reorganization, was added.